IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6492 OF 2004

Pandurang B.Hegade ... Petitioner.
Versus.
Vasant Anna Bhandare. ... Respondent.

Shri G.S.Godbole with Ms.Nisha Valani for the Petitioner.

Ms.Sanjivani Rane for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 10th March, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. The challenge in this Writ Petition is to the Judgment and Order dated 17th April 1997 passed by the leaned Designated Member of the Maharashtra Revenue Tribunal, Pune, in Revision Application filed under section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the said Act of 1948"). The Writ Petition has been filed on 2nd August 2004 for challenging the said order passed on 17th April 1997. Though it is stated in the petition that there is a delay of four years in filing the Writ Petition, in fact the Writ Petition is filed after lapse of a period of more than 7 years from the date of passing of the impugned order. It is true that some explanation has been given by the Petitioner in paragraph 14 of the

petition. The relevant part of the paragraph 14 reads as thus:

> "14. The Petitioner states that the Petitioner is filing the present writ petition after a lapse of 4 years. The Petitioner states that on account of death of his wife who was suffering from cancer from 19897 till 1999 and she died on 5th February 1999. The Petitioner has taken her for treatment on various places e.g. Barsi, Solapur, Pune and Bombay and spend a huge amount of Rs.3 to 4 lacs to save her life. The Petitioner states that the Petitioner for a quite long period has become mentally disturbed and was under the treatment of doctors and was not able to take any decision. The Petitioner states that the Petitioner was alone and there were no any other person, who take care of the Petitioner is also suffering from hypertension on account of his old age. On the other hand,case filed by Respondent Vasant Anna Bhandare against the Petitioner before the Junior Division at Mohol was dismissed against the Petitioner. The said case was handled by Advocate Shri B.S.Mane, Book, Osmanabad. The Petitioner is residing at Solapur. After the dismissal of the same, Advocate was represented to the Petitioner in

Appeal No. filed on behalf of the Petitioner. Thereafter, the said Appeal was also dismissed and Shri Advocate Mane has send the papers to Bombay Advocate for filing the Writ Petition with Shri Girish Godbole and Shri Girish Godbole, Advocate has prepared the draft of the writ petition on the present subject matter and send the same to Shri B.S.Mane on 14.11.2002. Hereto annexed and marked as Exhibit "F" is a copy of the said letter and certificate from doctor. But thereafter the Advocate Shri More has failed to inform of filing the Writ Petition to the petitioner and the Petitioner on account of his mental condition also could not contact Shri B.S.Mane. Thereafter, when the Second Appeal was filed on his behalf by Advocate Shri Mayur Narendra & Co. who also failed to take any further steps in the matter, after filing the said Second Appeal being Second Appeal No.811/2002. Thereafter, the matter was handed over to present Advocate Miss Nisha Valani, who has engaged Shri Godbole as Counsel and informed the client about challenging of the said order passed by the Maharashtra Revenue Tribunal. The Petitioner also not having any legal knowledge and not properly advised by his earlier Advocate and on account of his sickness could not challenge the

said order in time, hence, there is a delay of

4 years in filing the present writ petition."

3. It is pertinent to note that the Civil Suit filed by the Respondent against the Petitioner was decreed on 6th February 1999. On 22nd March 1999 the Petitioner preferred an appeal in the District Court for challenging the decree passed by the trial Court. The said appeal was decided on 5th March 2002. After the decision of the said appeal on 5th March 2003, the Second Appeal was filed in this Court on 3rd July 2003 along with the application for condonation of delay.

4. One of the grounds pleaded in this petition is unfortunate demise of the wife of the Petitioner on 5th February 1999. As stated earlier in March 1999 the Petitioner preferred Civil Appeal in the District Court for challenging the decree passed by the trial Court. Therefore, the said ground cannot be accepted as a valid explanation for delay. It is tried to be contended that the draft of the writ petition was kept ready on 14th November 2002. However, it is not explained as to why the petition could not be filed till August 2004. Inspite of the draft of the petition being ready on 14th November 2002, the same came to be lodged on 2nd August 2004. However, in the meantime on 3rd July 2003, the Appellant had filed the Second Appeal. Thus after 1999 the Appellant filed and prosecuted the proceedings of

Civil Appeal and the Second Appeal. Thus there is a gross unexplained delay on the part of the Petitioner in filing this Writ Petition under Article 227 of the Constitution of India.

5. Considering the fact that the Petitioner wants to avail of extra ordinary remedy under the Constitution of India, the gross unexplained delay of 7 years is fatal. The Writ Petition is liable to be dismissed on the above ground and is accordingly dismissed with no order as to costs.

Judge.